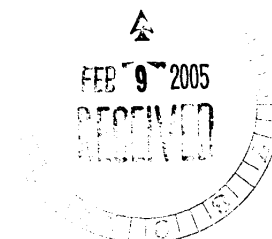


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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34662



**NOTICE OF OBJECTION OF THE DISTRICT OF COLUMBIA TO
THE BOARD'S DECISION OF FEBRUARY 8, 2005**

The District of Columbia ("the District"), hereby respectfully notes its objection to the Board's decision dated February 8, 2005. This filing is not intended to be the response of the District to the Petition of CSXT, which the Board indicates should be filed on or before February 16, 2004.

Specifically, the District objects to the denial of the full time allotted in the Board's rules; there is no imminent "emergency" because the disputed legislation is not yet effective. Even if it were effective, and the District moved immediately to enforce it, CSXT would be able to temporarily reroute its affected traffic to other carriers, thereby mitigating CSXT's allegations of imminent "disruption" of its service. *See* 49 C.F.R. § 1034.1(a) (a railroad may divert traffic to other carriers if it is "unable due to circumstances beyond its control promptly to transport traffic over a portion of its lines."). In addition, there is no "emergency" requiring an expedited ruling from this Board, because the Board has no power to ameliorate any claimed "emergency," as it cannot enjoin a District of Columbia statute.

To the extent CSXT makes factual allegations concerning, and requests a ruling on, the "effect" the District law will have on its operations, *see* Petition at 8, the District here respectfully requests discovery on that "imminent harm" issue, *i.e.*, the ability of

CSXT to reroute trains and the costs/benefits of doing so. *See* 49 C.F.R. § 1114.21(a) (party may obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding”).

To the extent CSXT requests an order that allows it “to route traffic along the routes to which the DC Ordinance [sic] applies[,]” Petition at 1, the District asserts that the Board does not possess the jurisdiction to authorize CSXT to violate District law nor, conversely, does the Board have authority to enjoin the enforcement of District law.

It appears that CSXT has attempted to couch this dispute in economic terms, alleging manifold disruptions to its service if the District legislation were to take effect. However, the stated purpose of the legislation is “to reduce the risk of attacks by terrorists” Petitioner’s Ex. 1 at 1. Recent, controlling case law is clear that the Board’s jurisdiction does not extend to matters of safety and security. *Boston and Maine Corp. v. Surface Transp. Bd.*, 364 F.3d 318, 321 (D.C. Cir. 2004) (“primary jurisdiction over railroad safety belongs to the [Federal Railroad Administration], not the STB.”) (citations omitted).

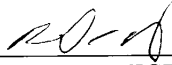
Finally, if the Board rules here prematurely, it risks upsetting the promulgation of the rules clearly contemplated by the legislation, *see* Petitioner’s Ex. 1 at Sec. 7, which rules, when final, may obviate CSXT’s need for relief. These issues will be further addressed in the District’s filing due on or before February 16, 2005.

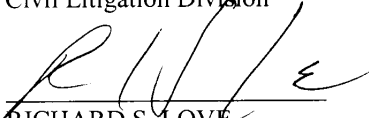
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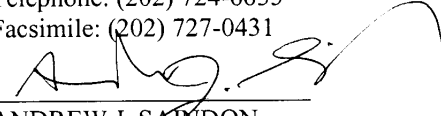
Respectfully submitted,

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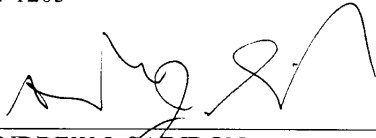
Attorneys for the District of Columbia

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing Notice of Objection of the District of Columbia were delivered by facsimile and by U.S. Mail, postage prepaid, this 9th day of February, 2005, to:

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